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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re)	No.	01-30923 DM
)		
PACIFIC GAS AND ELECTRIC	)	Chapter	11
COMPANY,)		
	)	Date:	December 27, 2001
Debtor.	)	Time:	1:30 p.m.
	)	Ctrm:	Hon. Dennis Montali
	)		235 Pine Street, 22 nd Floor
	)		San Francisco, California
)		

UNITED STATES TRUSTEE'S OBJECTION TO
DEBTOR'S MOTION FOR AUTHORIZATION TO FILE CERTAIN
OMNIBUS OBJECTIONS TO CLAIMS

Linda Ekstrom Stanley, United States Trustee, submits this objection to debtor's *Motion for Authorization to File Certain Omnibus Objections to Claims* (the "Motion"). The motion should be denied because it seeks a court order waiving the protections of Federal Rule 26 in advance of any litigation and without giving adverse parties notice of the intended waiver.

UNITED STATES TRUSTEE'S OBJECTION TO
DEBTOR'S MOTION FOR AUTHORIZATION TO FILE CERTAIN
OMNIBUS OBJECTIONS TO CLAIMS

1 **ARGUMENT**

2 **I. FEDERAL RULE OF CIVIL PROCEDURE 26 IS INTENDED TO FOSTER EARLY**
3 **RESOLUTION OF CLAIMS, NOT TO IMPOSE UNNECESSARY EXPENSE AND**
4 **DELAY, AND IT SHOULD APPLY HERE**

5 Debtor's Motion seeks an order waiving the application of Federal Rule of Civil
6 Procedure 26, applicable in bankruptcy under Federal Rule of Bankruptcy Procedure 7026
7 and 9014. Debtor alleges application of the rule would be "impractical, unnecessarily time-
8 consuming and wasteful of the estate's resources" (Motion 10:4-6) although debtor offers
9 no facts to support this contention. Debtor's narrow view of Rule 26 takes no account of the
10 motivations of the drafters of the Federal Rules.

11 Contrary to debtor's contention, Rule 26 was enacted to foster an early exchange of
12 information between litigants and to promote settlement of claims. It is not intended as an
13 abstract, superfluous burden. The rule was drafted to allow parties to clarify and resolve
14 disputes without the necessity of costly and time-consuming litigation:

15 A major purpose of the revision is to accelerate the exchange of basic information
16 about the case and to eliminate the paper work involved in requesting such
17 information, and the rules should be applied in a manner to achieve those
18 objectives . . .

19 [T]he experience of the few state and federal courts that have required pre-discovery
20 exchange of core information such as is contemplated in Rule 26(a)(1) indicates that
21 savings in time and expense can be achieved, particularly if the litigants meet and
22 discuss the issues in the case a predicate for this exchange

23 Fed. R. Civ. Proc. 26 Advisory Committee Notes to 1993 Amendments.

24 Rule 26(a) requires affirmative disclosure of fundamental information such as the
25 names and addresses of persons with information about the claims, copies of relevant
26 documents, a computation of the claim and any insurance coverage. It also requires a
27 "meet and confer" between the litigants.

28 Debtor has not proven the wisdom of eliminating the rule. Advance disclosure and
meetings between litigants do not impede the progress of litigation. Rather, the open

1 exchange of information would be enormously useful to both debtor and claimholders. The
2 chance to “meet and confer” would be invaluable to a litigant just trying to understand the
3 nature of a dispute.

4 **II. THE COURT MAY WAIVE THE APPLICATION OF RULE 26 BUT SHOULD NOT**
5 **DO SO WITHOUT NOTICE AND AN OPPORTUNITY TO OBJECT BY AFFECTED**
6 **PARTIES**

7 Debtor correctly alleges the requirements of Rule 26 may be waived in appropriate
8 circumstances. This is not an appropriate circumstance because debtor has not given
9 notice of the motion to adverse parties – the parties holding claims to which debtor intends
10 to object. The Federal Rules of Civil Procedure were meant to apply to all parties equally.
11 Approximately 13,000 claims have been filed in the case and debtor scheduled tens of
12 thousands of creditors. The Motion appears to have been served only on the Special
13 Notice List. Debtor makes no attempt to explain why other parties holding claims have not
14 been given notice of the intention to waive Rule 26.

15 Debtor obviously believes Rule 26 may have some benefit. Despite the request for a
16 blanket waiver of the rule Debtor reserves (in footnote 3 on page 6 of its memorandum)
17 “[the] right to seek further Order from this court (if appropriate) imposing the disclosure,
18 conference and other requirements of Rule 26(a) and (f) with respect to objection
19 proceedings for particular claims.” This reservation demonstrates the inappropriateness of
20 the debtor’s Motion – other claimants may believe, as debtor does, that Rule 26 is
21 necessary or, in debtor’s words “appropriate”. These claimants should be given the very
22 right debtor seeks to eliminate – the right to application of Rule 26 in a claims objection
23 proceeding. Otherwise, claimants come to the bankruptcy case with an immediate
24 disadvantage, the loss of immediate and compulsory disclosure under Rule 26. The
25 importance of the disclosure the rule requires should not be overlooked. If a party receives
26 an objection and does not hire a lawyer, at the very least the party will understand the basis
27
28

1 for the objection and the necessity of obtaining a lawyer.

2 Underlying debtor's request is a subtle inference that the case is so large the rules
3 should not apply. The United States Trustee disagrees with this view. Debtor's case is
4 complex and involves many parties. But a large bankruptcy case does not compel
5 elimination of important rules intended to make litigation less burdensome any more than it
6 eliminates a party's right to object to proposed alterations of the rules. It may be a burden
7 for debtor and its professionals to meet with all of the objected to-claimholders. It may be a
8 burden for debtor and its professionals to provide information to the claimholders. Neither
9 of these burdens changes the fact that parties are entitled to notice of changes in the
10 Federal Rules which they may or may not agree with. Debtor should take solace in its right
11 to seek a court order eliminating Rule 26 from the case on an appropriate showing and on
12 appropriate notice to the affected parties. Eliminating the rule now and without any notice is
13 not fair.
14

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16 For the foregoing reasons, the United States Trustee objects to the Motion and urges
17 the court deny it.

18 Date:

19 Patricia A. Cutler
20 Assistant United States Trustee

21 By: _____
22 Stephen L. Johnson
23 Attorneys for United States Trustee
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